

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

MARTINEZ *et al.*

Appl. No.: 10/669,597

Filed: September 25, 2003

For: **Polymer Conjugates with Decreased
Antigenicity, Methods of Preparation
and Uses Thereof**

Confirmation No.: 1312

Art Unit: 1654

Examiner: GUPTA, ANISH

Atty. Docket: 2057.0040002/ELE/HCC

**Request for Reconsideration of Patent Term Adjustment
Determination Under 37 C.F.R. § 1.705(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mail Stop Petitions

Sir:

Applicants herein request reconsideration of the patent term adjustment in the above-captioned application as indicated in the Notice of Allowance dated September 20, 2011. Pursuant to 37 C.F.R. §§ 1.705(b)(1) and (b)(2), Applicants provide a concise statement of facts involved as well as payment of fees set forth in 37 C.F.R. § 1.18(e).

Statement of the Facts

Applicants hereby request that the Patent Term Adjustment (PTA) for the above-captioned application be corrected to allow an addition of eighty-one (81) days to the current PTA calculation of four-hundred twenty-seven (427) days, the total PTA to date therefore being five-hundred eight (508) days.

The U.S. Patent and Trademark Office (PTO) mailed a Notice of Allowance and Fee(s) Due on December 20, 2011. This Notice contained a determination of Patent Term Adjustment under 35 U.S.C. § 154(b), which indicated that the PTA up to the date of the Notice of Allowance and Fee(s) Due is 427 days.

According to PAIR, the calculation of 427 days is based on a PTO prosecution delay of one-thousand one-hundred (1100) days (37 C.F.R. § 1.702(a)), reduced by an Applicant delay of six-hundred seventy-three (673) days (37 C.F.R. § 1.704(b)).

Applicants believe that the Applicant delay of 673 days should be decreased by eighty-one (81) days. *See* 37 C.F.R. § 1.704(d).

"A" Delay: PTO Delay Under 37 C.F.R. § 1.702(a) and 35 U.S.C. § 154(b)(1)(A)

Applicants believe the "A" delay by the PTO indicated in PAIR of 1100 days is correct. Thus, the period of PTO delay from the date 14 months after the filing of the application on September 25, 2003, which is November 25, 2004, to the mailing date of the Restriction Requirement on October 10, 2006, or 684 days, appears to be correct. In addition, the period of PTO delay from the date four months after the filing of the Response to Election/Restriction on March 7, 2007, which is July 7, 2007, to the mailing date of the Non-Final Rejection on August 22, 2007, or 46 days, appears to be correct. Further, the period of PTO delay from the date four months after the filing of the Response after Non-Final Action on November 20, 2007, which is March 20, 2008, to the mailing date of the Final Rejection on March 25, 2009, or 370 days, appears to be correct.

"B" Delay: PTO Delay Under 37 C.F.R. §1.702(b), 35 U.S.C. §154(b)(1)(B), and Wyeth v. Dudas

In addition, Applicants reserve the right to petition for reconsideration of patent term adjustment due to PTO delay under 37 C.F.R. § 1.702(b). Applicants also note that no Requests for Continued Examination under 37 C.F.R. § 1.114 (RCE) have been filed in the application.

Applicant Delay Under 37 C.F.R. §1.704(b)

Applicants believe that 81 of the 673 days of reduction in PTA due to Applicant delay should be reinstated under 37 C.F.R. § 1.705(b). PAIR indicates that this delay of 81 days is based on the time period between the filing of the Response after Non-Final Action on March 4, 2011, and the filing of the Information Disclosure Statement on May 24, 2011. This reduction in PTA is apparently made under 37 C.F.R. § 1.704(c)(8). However, Applicants note that the Information Disclosure Statement filed on May 24, 2011, was accompanied by a statement under 37 C.F.R. § 1.704(d) (see page 2 of the 6-page Transmittal Letter dated May 24, 2011). Thus,

the period from March 4, 2011, to May 24, 2011, does not count toward Applicant delay. 37 C.F.R. § 1.704(d).

Applicants believe the indication in PAIR of the remaining periods of Applicant delay for this application are correct. Thus, the period of delay from the date of filing of the Response to Election/Restriction on November 13, 2006, to the date of filing of the Supplemental Response to Election/Restriction on March 7, 2007, or 114 days, appears to be correct. In addition, the period of delay from the date of filing of the Response after Non-Final Action on November 20, 2007, to the date of filing of the Information Disclosure Statement on January 12, 2009, or 419 days, appears to be correct. Further, the period of delay from the date three months after the mailing of the Non-Final Rejection on October 4, 2010, which is January 4, 2011, to the date of filing of the Response after Non-Final Action on March 4, 2011, or 59 days, appears to be correct. The sum of 114 days, 419 days, and 59 days is 592 days of Applicant delay.

The above-captioned application is not subject to a terminal disclaimer. 37 C.F.R. § 1.705(b)(2)(iii).

Applicants do not believe that there were any circumstances during the prosecution of the application to date that constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704(c) beyond the above-mentioned delays under 37 C.F.R. § 1.704(b).

The Precise Relief Requested

In view of the above, Applicants are entitled, to date, to additional patent term adjustment of at least 81 days. In particular, the total Applicant delay of 673 days is incorrect, and Applicants believe the correct reduction of patent term adjustment under 37 C.F.R. § 1.704(a) to date is 592 days, for a total patent term adjustment to date of 508 days.

In accordance with 37 C.F.R. § 1.705(b)(1), the fee set forth in 37 C.F.R. § 1.18(e) is provided *herewith* as a credit card payment. It is not believed that additional fees are required beyond those that may otherwise be provided in documents accompanying this paper. However, if additional fees are required, the

U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

If it is believed, for any reason, that personal communication will expedite consideration of this Request, please do not hesitate to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Request is respectfully requested.

Respectfully submitted,

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